

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALGERNON STUBBS,

Defendant-Appellant.

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UNPUBLISHED

August 7, 2007

No. 269537

Calhoun Circuit Court

LC No. 2005-002670-FC

Before: Smolenski, P.J., and Fitzgerald and Kelly, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted from a judgment of sentence requiring him to register as a sex offender under the Sex Offenders Registration Act (SORA), MCL 28.721 *et seq.* Because we find that the SORA is inapplicable to the offense of which defendant was convicted, we vacate the registration requirement. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with first-degree criminal sexual conduct (CSC), MCL 750.520b(1)(f), and assault with intent to do great bodily harm less than murder, MCL 750.84. According to the presentence report, defendant engaged in nonconsensual intercourse with the victim, his live-in girlfriend, then struck her in the nose and tried to suffocate her. Pursuant to a plea agreement, the original charges were dismissed and defendant pleaded no contest to an added charge of attempted assault with intent to do great bodily harm. The factual basis for the plea was the victim's preliminary examination testimony that defendant had struck her in the nose and then smothered her with a pillow. Because the criminal episode included an alleged sexual offense, the trial court required defendant to register under SORA.

The construction and application of SORA presents a question of law that is reviewed de novo on appeal. *People v Golba*, 273 Mich App 603, 605; 729 NW2d 916 (2007).

"SORA requires an individual who is convicted of a listed offense after October 1, 1995, to register as a sex offender. MCL 28.723(1)(a)." *Id.* The term "convicted" is defined in pertinent part as "[h]aving a judgment of conviction or a probation order entered in any court having jurisdiction over criminal offenses[.]" MCL 28.722(a)(i). The term "listed offense" is defined by MCL 28.722(e) and includes first-degree CSC. MCL 28.722(e)(x). Although defendant was charged with first-degree CSC, that charge was dismissed and thus he was not convicted of that offense. Defendant was convicted of attempted assault with intent to do great

bodily harm less than murder. While the term “listed offense” is defined to include an attempt or conspiracy to commit an enumerated offense, MCL 28.722(e)(xiii), assault with intent to do great bodily harm is not specifically designated as an enumerated offense under § 2(e).

The prosecutor argued below that registration was required under the “catchall” provision for offenses of a sexual nature. MCL 28.722(e)(xi) defines “listed offense” to include: “Any other violation of a law of this state or a local ordinance of a municipality that by its nature constitutes a sexual offense against an individual who is less than 18 years of age.” By its terms, § 2(e)(xi) requires that the otherwise unspecified sexual offense have been committed against a person under the age of 18. *Golba, supra* at 607; *People v Meyers*, 250 Mich App 637, 646-647; 649 NW2d 123 (2002). According to the presentence report, the victim was over the age of 18. Therefore, § 2(e)(xi) did not apply.

The prosecutor argues on appeal that registration was required under MCL 28.722(e)(xiv) which defines “listed offense” to include: “An offense substantially similar to an offense described in subparagraphs (i) to (xiii) under a law of the United States, any state, or any country or under tribal or military law.” Because all other subsections of § 2(e) identify those offenses proscribed by the laws of the state of Michigan subject to SORA, it would appear that § 2(e)(xiv) was meant to apply to offenses proscribed by federal law and the laws of other states and countries that are similar to the listed Michigan offenses, not to other offenses proscribed by Michigan law but not included as a listed offense. Further, § 2(e)(xiv) requires that the offense of which the defendant is convicted be “similar to” a listed offense and the prosecutor has not identified a listed offense to which attempted assault with intent to do great bodily harm is similar. Because attempted assault with intent to do great bodily harm is not a listed offense, the trial court erred in requiring defendant to register under SORA.

The judgment of sentence is vacated in part to the extent that it requires defendant to register as a sex offender and affirmed in all other respects.

/s/ Michael R. Smolenski  
/s/ E. Thomas Fitzgerald  
/s/ Kirsten Frank Kelly